

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PAUL PERINGER)

For Appellant: Paul Peringer, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Jack E. Gordon
Counsel

O P I N I O N

This appeal is made pursuant to section 1859⁴ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paul Peringer against proposed assessments of additional personal income tax in the amounts of \$151.59, \$255.80, \$282.91, and \$314.48 for the years 1965, 1966, 1967, and 1968, respectively. All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The sole issue is whether appellant was a resident of California during the years in question.

Appellant is an engineer with the federal government and, except for military and educational-leave, has been continuously employed as a federal civil servant since his career began in Seattle, Washington, in 1942. His job sites and dates of transfer have been as follows: Juneau, Alaska, in April 1946; Anchorage, Alaska, in November 1946;

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Corona, California, in 1957; Point Magu, California, in November 1961; Port Hueneme, California, in August 1964. Appellant currently remains employed at Port Hueneme. All of appellant's job transfers have been initiated by the federal government and at all times since 1946 he has sought a transfer back to the Seattle area. He votes in the State of Washington, maintains his church membership there, holds his professional engineering license from that state, and has taken adult education courses there.

Residents of this state are taxed upon their entire net income from whatever source derived. (Section 17041.) Section 17014, subdivision (a) defines a "resident" to include "[e]very individual who is in this State for other than a temporary or transitory purpose." Section 17016 creates a presumption of residence if an individual is in California for an aggregate of nine months during the taxable year. This presumption may be overcome by satisfactory evidence that the individual is in this state for a temporary or transitory purpose.

The facts conclusively show that appellant lived in this state for at least seven years prior to the years here under review, that he lived in this state throughout the years on appeal, and that he continues to live in this state. Absent a showing of a mere temporary or transitory purpose, it is abundantly clear that appellant falls within the presumption of residence found in section 17016.

Appellant makes two principal arguments to overcome the imposition of resident status. The first of these is an attempt to overcome the presumption of residence found in section 17016. The essence of this argument is that appellant's employment locations were not permanent, that he was subject to transfer at any time, and that the history of his career does in fact show that he has been transferred several times at irregular intervals. These facts, it is argued, show that appellant was in this state for a mere temporary or transitory purpose throughout the years he has lived in California.

California Administrative Code, title 18, regulation 17014-17016(b) defines "temporary or transitory purpose" as follows:

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Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State...for business purposes which will require a long or indefinite period to accomplish, or is employed in a position which may last permanently or indefinitely...he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country. (Emphasis added.)

A review of all of the facts of this case causes us to conclude that appellant's employment in California was indefinite in nature. Under these circumstances, appellant's presence in this state must be characterized as for other than a temporary or transitory purpose. (Appeal of Ralph V. and Marvelle J. Currier, Cal. St. Bd. of Equal., Jan. 6, 1969.) This argument of appellant must therefore be rejected.

Appellant's second argument challenges the power of the State of California to impose resident status on federal civil servants employed and living in this state while domiciled in another state. To impose such status, it is argued, would tend to hamper or interfere with the powers granted to the federal government by the United States Constitution. This argument is without merit. (See Wood v. Tawes, 181 Md. 155 [28 A.2d 850], cert. denied, 318 U.S. 788 [87 L. Ed. 1154]. In any event, it is a well established policy of this board to refrain from ruling on a constitutional question in an appeal involving a proposed assessment of

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additional tax. This policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of an unfavorable decision. (Appeal of Maryland Cup Corp., Cal. St. Bd. of Equal., March 23, 1970; Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

When all the facts are considered, we must conclude that appellant was in this state for other than a temporary or transitory purpose during the years in question and, therefore, he was a resident of California for state income tax purposes. Accordingly, we must sustain respondent's action in this matter.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Paul Peringer against proposed assessments of additional personal income tax in the amounts of \$151.59, \$255.80, \$282.91 and \$314.48 for the years 1965, 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of December, 1972, by the State Board of Equalization.

John W. Lynch, Chairman

William G. Bennett, Member

Duke Davis, Member

Jack Kelle, Member

ATTEST:

W. W. Dwyer, Secretary